

REMARKS

Prior to this Amendment, Claims 1-58 appeared to be pending in the application. However, due to an error in the claims numbering, there was no Claim 51. Thus, Claims 52-58 should have been numbered Claims 51-57, respectively. As a consequence of this error in numbering, new claims submitted herein are numbered starting with Claim 58, as this is the next highest consecutive number from the properly numbered original claims. With this Amendment, Claims 1-57 have been canceled, without prejudice towards their introduction in one or more timely filed related applications, and Claims 58-86 have been newly added. Thus, after entry of this Amendment, Claims 58-86 are pending in the instant application.

New Claim 58 corresponds to original Claim 11. The remaining new claims depend from new Claim 58. Support for new Claims 58-86 is found throughout the application and claims as originally filed. For example, new Claims 59-66 find support in original Claims 2-8; new Claims 67-80 find support in original Claim 17 and at page 22, line through page 32, line 26; and new Claims 81-86 find support at page 29, line 24 through page 30, line 5 and at page 37, lines 1-5. Accordingly, new Claims 58-86 do not present new matter, making entry into the instant application is proper.

Requirement for Restriction Under 35 U.S.C. § 121

The Patent Office has required restriction of the originally pending claims to one of nine groups. Applicant elects the claims of Group III, Claims 10 and 11, without traverse, for examination. As new Claim 58 corresponds to canceled Claim 11 and the remaining new claims depend therefrom, Applicant believes new Claims 58-86 are consonant with the requirement for restriction and the instant election.

Depending upon the election, the Patent Office additionally requested election of certain species. Applicant believes the various elections of species are moot in light of the election of Group III. However, should new Claims 59-86 present similar issues, for Subgroup "A" Applicant *provisionally* elects the species "random peptide" for further prosecution on the merits. Claims 58-60 and 62-86 read on this provisionally elected species. Regarding Subgroup "B," Applicant *provisionally* elects the species "a green fluorescent protein" for further prosecution on the merits. Claims 58-64 and 66-86 read on this provisionally elected species. In

Serial No.: 09/800,770
Filed: March 6, 2001

addition, Applicant notes for the record that he traverses the implication by the Patent Office that some of the original claims read on a fusion polypeptide *excluding* a reporter protein. As the original claims use the open-ended transition "comprising," the various fusion polypeptides, such as the fusion polypeptide of Claim 1, while not required to, may include a reporter protein. Regarding Subgroup "C," Applicant *provisionally* elects the species "without a fusion partner" for further prosecution on the merits. Claims 58-86 read on this provisionally elected species. Again, Applicant notes for the record that he traverses the statements by the Patent Office that original Claim 1 recites a fusion polypeptide that *excludes* a fusion partner. Owing to the open-ended transition "comprising," while the fusion polypeptides of Claim 1 need not include a fusion partner, they are not *excluded* from doing so. As indicated by the open-ended transition, as well as the dependency of original Claim 8, the fusion polypeptides of original Claim 1 may include a fusion partner.

Applicant understands that any provisional elections of species are being made solely to facilitate the examination of the claims, and that he is entitled to consideration of additional species upon an indication that a generic claim is allowable.

CONCLUSION

Applicant submits Claims 58-86 satisfy all of the statutory requirements for patentability and are in condition for allowance. Accordingly, an early notification of the same is kindly solicited. Please direct any calls in connection with this application to the undersigned at (650) 494-8700.

Respectfully submitted,
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Dated: March 28, 2003

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